



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

AR0001

IN THE MATTER OF:)
)
AAD Distribution & Drycleaning Service Inc.,)
a California Corporation) U.S. EPA Docket No. 2001-02
AAD Disposal, Inc.,) UNILATERAL ADMINISTRATIVE
a Colorado Corporation) ORDER FOR PERFORMANCE OF
Robert H. and Joanne Green Trust,) REMOVAL ACTION
Baldwin Properties, Trustee)
)
Proceeding Under Section 106(a))
of the Comprehensive Environmental)
Response, Compensation, and)
Liability Act of 1980,)
42 U.S.C. §9606(a).)
)

I. AUTHORITY

This Unilateral Administrative Order ("Order") is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 ("CERCLA"). The President delegated this authority to the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") by Executive Order 12580, January 23, 1987, 52 Fed. Reg. 2923, and further delegated it to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by EPA Delegation Nos. 14-8-A and 14-14-B. This authority has been duly redelegated to the Director, Superfund Division, EPA, Region 9 ("Director") by delegation dated September 29, 1997.

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II. PARTIES BOUND

1. This Order shall apply to and be binding on the following: AAD Distribution and Dry Cleaning Services, Inc., a California Corporation; AAD Disposal, Inc., a Colorado Corporation; and the Robert H. and Joanne Green Trust ("Green Trust"), and the partnership Baldwin Properties, as trustee for the Green Trust. This Order shall be binding on these parties (collectively "Respondents"), and their agents, successors and assigns. No change in ownership or operational status will alter Respondents' obligations under this Order. Notwithstanding the terms of any contract or agreement, Respondents are responsible for compliance with this Order and for ensuring that their employees, contractors, and agents comply with this Order. Respondents shall provide a copy of this Order to all contractors, subcontractors, and consultants which are retained by Respondents to perform the work required by this Order within three (3) days after the Effective Date of this Order or within three (3) days of retaining their services, whichever is later. A list of the Respondents is attached to this Order as Appendix A.

2. Respondents may not convey any title, easement, or other interest they may have, either individually or collectively, in any property comprising the Site, as the term "Site" is defined below, without a provision permitting the continuous implementation of the provisions of this Order. Any Respondent wishing to transfer any title, easement, or other interest it may have in any property comprising the Site shall provide a copy of this Order to any subsequent owner(s) or successor(s) before any ownership rights are transferred. Any such Respondent shall advise EPA one (1) month in advance of any anticipated transfer of interest.

III. DEFINITIONS

3. Unless otherwise expressly provided herein, the terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning

assigned to them in CERCLA or in such regulations. Whenever the terms listed below are used in this Order, or in the Exhibits attached hereto and incorporated hereunder, the following definitions shall apply:

"Days" shall mean consecutive calendar days unless expressly stated otherwise.

"Working days" shall mean consecutive calendar days other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments & Reauthorization Act of 1986, 42 U.S.C. §9601 et seq.

"Unilateral Order" or "Order" shall mean this Unilateral Administrative Order, EPA docket number 2001-02, and all exhibits attached hereto. In the event of a conflict between this Unilateral Order and any exhibit, this Unilateral Order shall control.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. §9605, codified at 40 C.F.R. Part 300.

"Paragraph" shall mean a portion of this Unilateral Order identified by an Arabic numeral.

"Response Action" shall be those specific work items each Respondent is required to perform at the Site pursuant to this Unilateral Order, as set forth in Section IX of this

Unilateral Order.

"Respondents" shall mean, both individually and collectively, AAD Distribution and Dry Cleaning Services, Inc., a California Corporation; AAD Disposal, Inc., a Colorado Corporation; and the Robert H. and Joanne Green Trust, and Baldwin Properties, as trustee for the Green Trust.

"Section" shall mean a portion of this Unilateral Order identified by a Roman numeral, unless otherwise stated.

"State" shall mean the State of California, and all of its political subdivisions and agencies, including the California Department of Toxic Substances Control ("DTSC").

"United States" shall mean the United States of America.

IV. FINDINGS OF FACT

4. Site description

The Site consists of a brick warehouse and a truck and trailer parked in the adjacent warehouse yard, all located at 8460 Baldwin Street, Oakland, Alameda County, California (the "Site.") The Site is located in an industrial/warehousing area. There is no secondary containment for the warehouse or the yard to prevent off-site migration at the Site. The Site is not currently authorized for the storage of hazardous waste pursuant to Section 25201 of the California Health and Safety Code.

5. Site characteristics and ownership

- a. AAD Distribution and Drycleaning Services Inc. leased the Site for the "containerization of liquid and solid dry cleaning waste for reshipment and recycling," and operated the Site for such purpose. Additionally, AAD Distribution and Drycleaning acquired spent perc and perc contaminated wastes

from dry cleaning operations in several western states, and, by contract or other agreement, arranged for AAD Disposal, Inc. to transport the spent perc and perc contaminated wastes to its facility in Vernon, California, or to another treatment, storage and disposal facility of its selection.

b. AAD Disposal, Inc. used the Site as a transfer station and consolidated drums of hazardous substances at the Site for subsequent transportation by contract or agreement to a treatment, storage or disposal facility. AAD Disposal, Inc. owns the truck and trailer at the Site.

c. The Robert H. and Joanne Green Trust, employing Baldwin Properties as the trustee, is the owner and lessor of the Site.

6. Release Characteristics

The DTSC has placed the truck and the warehouse under quarantine at the Site pending rectification of waste handling and packaging violations and proper manifesting for disposal at an authorized facility. AAD Drycleaning and Disposal Services, Inc. and AAD Disposal, Inc. have abandoned the possession of, use of and the materials at the Site.

EPA conducted a physical examination of the warehouse and trucks on October 17, 2000, and found the warehouse to contain approximately 315 drums, and the truck to contain 51 drums. These drums are all labeled with hazardous waste labels indicating the contents to be tetrachloroethylene and tetrachloroethylene contaminated wastes (filters and rags). There is no entity at the Site that claims management of or responsibility for the drums on Site.

Tetrachloroethylene, more commonly referred to as "perc," is a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14) and 40 C.F.R. §302.4 and Table 302.4. The drums and containers in the warehouse and in the truck trailer contain spent perc and

are a hazardous waste (RCRA Waste Code F002 and D039). While perc generally is considered a noncombustible liquid, in event of a fire it can decompose rapidly to produce hydrogen chloride and phosgene, both of which are highly toxic. In addition, leaking perc inside the warehouse or the closed truck trailer could readily produce conditions in the confined space that are immediately dangerous to life and health.

Threats to public health or welfare or the environment stem from the imminent potential for a catastrophic release of hazardous substances at the Site and the improper storage of hazardous chemicals at the Site. In addition, the containers appear to be in a deteriorated condition, which exacerbates the imminent threat of release to the ground either through leakage, an act of vandalism, fire, explosion, or earthquake. Leaking or unsecured containers within the warehouse or the truck trailer could produce confined space conditions that are immediately dangerous to life and health. The Site is located within a seismically active area, within one city block of public retail developments, and within one-half mile of the Oakland Coliseum.

V. CONCLUSIONS OF LAW

7. The AAD Oakland Site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

8. The Respondents AAD Distribution and Drycleaning Services, Inc., AAD Disposal, Inc. and the Green Trust are each "persons" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. §9601 (21).

9. Perc is a "hazardous substance" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14). Spent perc and perc contaminated wastes are "hazardous wastes" within the meaning of Sections 1004(5) and 3001 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§6903(5) and 6921.

10. Consistent with the definition stated in Section 101(29) of CERCLA, 42 U.S.C. §9601(29), AAD Distribution and Drycleaning Services, Inc. and AAD Disposal, Inc. "disposed" of the drums containing hazardous substances by abandoning the drums in deteriorating containers with improper stacking and spacing at the Site, or otherwise placing the drums in a manner such that the contents could enter the environment.

11. AAD Distribution and Drycleaning Services, Inc. and AAD Disposal, Inc. are "operators" at the Site, as defined in Section 101(20) of CERCLA, 42 U.S.C. §9601(20), at the time of disposal of hazardous substances at the Site.

12. Consistent with the definition stated in Section 101(20) of CERCLA, 42 U.S.C. §9601(20), the Green Trust is the "owner" of the Site. Consistent with the definition stated in Section 101(20) of CERCLA, 42 U.S.C. §9601(20), AAD Disposal, Inc. is an "owner" of the truck and trailer at the Site.

13. Respondents are each "liable parties" within the meaning of Section 107(a), 42 U.S.C. §9607(a).

14. The potential for release of hazardous substances from the Site constitutes an imminent and substantial endangerment due to the actual or threatened release of hazardous substances, as the term "release" is defined in Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

15. Respondents are each subject to this Order under Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

VI. DETERMINATIONS

Based on the Findings of Fact and the Conclusions of Law stated herein, the Director has made the following determinations:

16. That an actual or threatened release of hazardous substances at the Site presents an imminent and substantial endangerment to the public health or welfare or the environment.

17. That conditions present at the Site constitute a threat to public health or welfare or the environment based upon a consideration of the factors set forth in the NCP at 40 C.F.R.

§300.415(b), and that the actions required by this Order are necessary to protect the public health, welfare and the environment.

18. That the actions required by this Order, if properly performed, will be deemed consistent with the NCP, and are appropriate to protect the public health or welfare or the environment.

VII. NOTICE TO THE STATE

19. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a), EPA has notified the State of California and the County of Los Angeles of the issuance of this Order by providing a copy of this Order

VIII. EFFECTIVE DATE

20. This Order is deemed effective beginning three (3) days after receipt of this Order, unless a conference is requested as provided herein. If such a conference is requested, this Order shall be effective the second (2nd) day following the day of such conference unless modified in writing by EPA.

IX. ORDER

21. Based on the Findings of Fact, Conclusions of Law, and Determinations, EPA hereby orders Respondents to perform the specific work set forth below under the direction of the EPA OSC, as designated in Section XIV of this Order, and to comply with all requirements of this Order until EPA provides notice that the Response Action is complete.

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A. Work to be Performed

22. Respondents immediately shall maintain twenty-four hour security at the Site, which shall meet with EPA approval. Respondents shall restrict access to the Site and shall not allow any materials, equipment, or any other item to be removed from the Site without prior EPA approval. This includes temporarily disabling the truck and trailer containing hazardous substances subject to this Order.

23. Within five (5) days after the Effective Date of this Order, Respondents shall submit a Work Plan to EPA for approval. The Work Plan shall provide a concise description of the activities to be conducted to comply with the requirements of this Order, and shall include a proposed schedule for implementing and completing such activities. The Work Plan shall comply with the guidelines for preparation provided in Paragraph 25, below, and require Respondents to perform, at a minimum, the following removal activities:

- 1) Perform a comprehensive examination of the contents of the warehouse and truck and trailer to determine that all hazardous substances are in suitable/authorized containers, properly manifested and properly labeled according to all applicable federal and state requirements for the shipment of hazardous waste.
- 2) Repair, overpack or appropriately contain all leaking and damaged containers.

This part of the Response Action will require, as necessary, recontainerization of material into containers in accordance with regulations of the United States Department of Transportation. In addition, this part of the Response Action will require lab packing small containers, solidification of liquid wastes and neutralization or other on-site treatment of wastes as appropriate.

3) Properly transport and dispose of, in accordance with all applicable or appropriate regulations, all hazardous substances at the Site. Where feasible, this part of the Response Action may include appropriate reuse/recycle options. Any hazardous substance removed off-site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance with Section 121(d)(3) of CERCLA, 42 U.S.C. §9621(d)(3), and the EPA "Revised Procedures for Implementing Off-Site Response Actions," (OSWER Directive 98343.11, November 13, 1987).

4) Provide EPA with copies of all documentation related to off-Site disposal of wastes including, but not limited to, manifests, waste profiles and analytical data and disposal costs.

5) Notify the EPA OSC at least forty-eight (48) hours prior to commencement of any work at the Site. Notify the EPA OSC at least seventy-two (72) hours prior to disposal of wastes.

6) Examine and decontaminate the Site and equipment as necessary to comply with this Order, or the respective Work Plan, Health and Safety Plan or Quality Assurance Project Plan.

7) Provide and implement a post-cleanup sampling and analysis plan to include soils sampling around each of the trucks and in the warehouse.

8) Implement the Work Plan within five (5) days after EPA approves the Work Plan pursuant to Paragraphs 25 and 28 of this Order, and complete work under the Work Plan within thirty (30) days thereafter.

24. Within five (5) days of the Effective Date of this Order, Respondents shall provide EPA with documentation that adequately demonstrates their financial ability to complete

the work to be performed pursuant to this Order. Examples of adequate financial documentation that EPA will accept include, but are not limited to, a signed contract or guarantee on the part of the Respondent's contractor that it will complete the work to be performed, a letter of credit from a financial institution, or an escrow account for work to be performed.

25. The Work Plan required in Paragraph 23 shall be reviewed by EPA, which may approve, disapprove, require revisions, or modify the Work Plan. Once approved, the Work Plan shall be deemed to be incorporated into and made a fully enforceable part of this Order. The Respondents shall implement all work plan(s) as finally approved by the EPA. In addition to the requirements listed in Paragraph 23, the Work Plan shall include:

1. A Health & Safety Plan prepared in accordance with EPA's Superfund Standard Operating Safety Guide, dated June 1992; and shall comply with all current Occupational Safety and Health Administration ("OSHA") regulations applicable to Hazardous Waste Operations and Emergency Response, 29 C.F.R. Part 1910. Respondents shall incorporate all changes to the Health and Safety Plan recommended by EPA and implement the Health and Safety Plan throughout the performance of the removal action; and

2. A Quality Assurance Project Plan ("QAPP") that is consistent EPA Guidance for Quality Assurance Project Plans (EPA QA/G-5); Preparation of a U.S. EPA Region 9 Field Sample Plan for EPA-Lead Superfund Projects (Document Control No.: 9QA-05-93); and Guidance for the Data Quality Objectives Process (EPA QA/G-4).

26. Respondents shall provide EPA with written weekly summary reports. These reports should contain a summary of the previous week's activities to comply with this Order and anticipated activities toward compliance with this Order.

27. All documents, including technical reports, and other correspondence to be submitted by the Respondents pursuant to this Order, shall be sent by over-night mail to the following addressees or to such other addressees as EPA hereafter may designate in writing, and shall be deemed submitted on the date received by EPA.

Tom Dunkelman, On Scene Coordinator
US Environmental Protection Agency
75 Hawthorne Street, Mail Code SFD-6
San Francisco, CA 94105

Respondents shall submit two (2) copies of each document to EPA.

28. EPA shall review, comment, and approve or disapprove each plan, report, or other deliverable submitted by Respondents. All EPA comments on draft deliverables shall be incorporated by the Respondents. EPA shall notify the Respondents in writing of EPA's approval or disapproval of a final deliverable. In the event of any disapproval, EPA shall specify the reasons for such disapproval, EPA's required modifications, and a time frame for submission of the revised report, document, or deliverable. If the modified report, document or deliverable is again disapproved by EPA, EPA first shall notify the Respondents of its disapproval of the resubmitted report, document, or deliverable, and then may draft its own report, document or deliverable and incorporate it as part of this Order, may seek penalties from the Respondents for failing to comply with this Order, or may conduct the remaining work required by this Order.

29. For purposes of this Order, EPA's authorized representatives shall include, but not be limited to, consultants and contractors hired by EPA to oversee the activities required by this Order.

B. Selection of Contractor(s) and Subcontractor(s)

30. All work performed by or on behalf of Respondents pursuant to this Order shall be performed by qualified individuals or contractors with expertise in hazardous waste site in-

investigation or remediation, unless agreed otherwise by EPA. Respondents shall, within five (5) days after the Effective Date of this Order, notify EPA in writing of the name, title and qualifications of the individual(s) who will be responsible for carrying out the terms of this Order, and the name(s) of any contractor(s) or subcontractor(s). The qualifications of the persons, contractors, and subcontractors undertaking the work for Respondents shall be subject to EPA review.

31. If EPA disapproves of any person's or contractor's technical or work-experience qualifications, EPA will notify the Respondents in writing. Respondents shall, within five (5) working days of Respondents' receipt of EPA's written notice, notify EPA of the identity and qualifications of the replacement(s). Should EPA disapprove of the proposed replacement(s), Respondents shall be deemed to have failed to comply with the Order.

32. Respondents may propose to change the individual(s), contractor(s), or subcontractor(s) retained to direct and supervise the work required by this Order. If Respondents wish to propose such a change, the Respondents shall notify EPA in writing of the name, title, and qualifications of the proposed individual(s), proposed contractor(s), or proposed subcontractor(s), and such individual(s), contractor(s) or subcontractor(s) shall be subject to approval by EPA in accordance with the terms of Paragraphs 30 and 31, above. The naming of any replacement(s) by Respondents shall not extend any deadlines required by this Order nor relieve the Respondents of any of their obligations to perform the work required by this Order.

33. Respondents will notify EPA of their respective field activities at least seventy-two (72) hours before initiating them so that EPA may adequately schedule oversight tasks.

34. At least four (4) days prior to commencing any work at the Site pursuant to this Order, Respondents shall submit to EPA a certification that Respondents or their contractor(s)

and subcontractor(s) have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property that may result from the activities to be conducted by or on behalf of Respondents pursuant to this Order. Respondents shall ensure that such insurance or indemnification is maintained for the duration of performance of the work required by this Order. Respondents shall ensure that the United States is named as an additional named insured on any such insurance policies.

C. General Provisions:

35. All work required by this Order shall be conducted in accordance with: CERCLA; the NCP; EPA Region 9 "Guidance for Preparing Quality Assurance Project Plans for Superfund Remedial Projects" (EPA, November 1992); any final amended or superseding versions of such documents provided by EPA; other applicable EPA guidance documents; and any report, document or deliverable prepared by EPA because Respondents fail to comply with this Order.

36. All plans, schedules, and other reports that require EPA's approval and that are required to be submitted by the Respondents pursuant to this Order shall, after approval by EPA, be incorporated into and enforceable under this Order.

37. EPA will oversee Respondents' activities as specified in Section 104(a)(1) of CERCLA, 42 U.S.C. §9604(a)(1). Respondents will support EPA's initiation and implementation of activities needed to carry out its oversight responsibilities. Respondents also shall cooperate and coordinate the performance of all work required to be performed under this Order with all other work being performed at the Site, including work performed by EPA, the State, another Respondent, or any other party performing work at the site with the approval of EPA.

~~38. Respondents shall undertake all actions required by this Order in accordance with~~

the requirements of all applicable local, state, and federal laws and regulations unless an exemption from such requirements is specifically provided under CERCLA or unless the Respondents obtain a variance or exemption from the appropriate governmental authority.

X. NOTICE OF INTENT TO COMPLY

39. Respondents shall, within two (2) days of the Effective Date of this Order, provide written notice to EPA of Respondents' irrevocable intent to comply with this Order. Failure to respond, or failure to agree to comply with this Order, shall be deemed a refusal to comply with this Order.

XI. OPPORTUNITY TO CONFER

40. Respondents may, within two (2) days of receipt of this Order, request a conference with the Chief of the Emergency Response Office in the Superfund Division, or whomever the Chief of the Emergency Response Office may designate. If requested, the conference shall occur within three (3) days of the request, unless extended by mutual agreement of the Parties, at EPA's Regional Office, 75 Hawthorne Street, San Francisco, California.

41. At any conference held pursuant to Respondents' request, the Respondents may appear in person, or be represented by an attorney or other representative. If Respondents desire such a conference, the Respondents shall contact Andrew Helmlinger, EPA Attorney Advisor, at (415) 744-1325.

42. The purpose and scope of any such conference held pursuant to this Order shall be limited to issues involving the implementation of the Response Action required by this Order and the extent to which Respondents intend to comply with this Order. If such a conference is held, the Respondents may present any evidence, arguments or comments regarding this Order, its applicability, any factual determinations on which the Order is based, the appropriateness of any

action that the Respondents are ordered to take, or any other relevant and material issue. Any such evidence, arguments or comments should be reduced to writing and submitted to EPA within three (3) days following the conference. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondents a right to seek review of this Order, or to seek resolution of potential liability, and no official record of the conference will be made. If no conference is requested, any such evidence, arguments or comments must be submitted in writing within three (3) days following the Effective Date of this Order. Any such writing should be directed to Andrew Helmlinger, EPA Attorney Advisor, at the address stated in Paragraph 40.

43. Respondents are hereby placed on notice that EPA will take any action that may be necessary in the opinion of EPA for the protection of public health and welfare and the environment, and Respondents may be liable under Section 107(a) of CERCLA, 42 U.S.C. §9607(a), for the costs of those actions.

XII. ENDANGERMENT AND EMERGENCY RESPONSE

44. In the event of any action or occurrence during the performance of the work that causes or threatens to cause a release of a hazardous substance or that may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action(s) to prevent, abate, or minimize the threat, and shall immediately notify EPA's primary OSC, or, if the primary OSC is unavailable, EPA's alternate OSC, as designated Section XIV of this Order. If neither of these persons is available, Respondents shall notify the EPA Emergency Response Unit, Region 9, phone number (415) 744-2000. Respondents shall take such action(s) in consultation with EPA's OSC and in accordance with all applicable provisions of this Order, including but not limited to the Health and Safety Plan.

45. Nothing in the preceding Paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances at or from the Site.

XIII. MODIFICATION OF WORK REQUIRED

46. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify the EPA OSC by telephone within twenty-four (24) hours of discovery of the unanticipated or changed circumstances. This verbal notification shall be followed by written notification postmarked no later than three (3) days of discovery of the unanticipated or changed circumstances.

47. The Director may determine that in addition to tasks addressed herein, additional work may be required to address the unanticipated or changed circumstances referred to in Paragraphs 44 and 46. Where consistent with Section 106(a) of CERCLA, 42 U.S.C. §9606(a), the Director may direct as an amendment to this Order that Respondents perform these tasks in addition to those required herein. Respondents shall implement the additional tasks that the Director identifies. The additional work shall be completed according to the standards, specifications, and schedules set forth by the Director in any modifications to this Order.

XIV. DESIGNATED PROJECT MANAGERS

48. EPA designates Tom Dunkelman, an employee of Region 9 of EPA, as its primary On-Scene Coordinator ("OSC") and designated representative at the Site, who shall have the authorities, duties, and responsibilities vested in the OSC by the NCP. This includes, but is not limited to, the authority to halt, modify, conduct, or direct any tasks required by this Order or undertake any Response Action (or portions of the Response Action) when conditions at the Site

present or may present a threat to public health or welfare or the environment as set forth in the NCP. Within seven (7) days of the Effective Date of this Order, Respondents shall designate a Project Coordinator who shall be responsible for overseeing Respondents' implementation of this Order. To the maximum extent possible, all oral communications between Respondents and EPA concerning the activities performed pursuant to this Order shall be directed through EPA's OSC and Respondents' Project Coordinator. All documents, including progress and technical reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be delivered in accordance with Paragraph 27, above.

49. EPA and Respondents may change their respective OSC and Project Coordinator. Notification of such a change shall be made by notifying the other party in writing at least five (5) days prior to the change, except in the case of an emergency, in which case notification shall be made orally followed by written notification as soon as possible.

50. Consistent with the provisions of this Order, the EPA designates Mark Calhoon as an alternate OSC, in the event Tom Dunkelman is not present at the site or is otherwise unavailable. During such times, Mark Calhoon shall have the authority vested in the OSC by the NCP, as set forth in Paragraph 48 above.

51. The absence of the EPA OSC from the Site shall not be cause for the stoppage of work. Nothing in this Order shall limit the authority of the EPA OSC under federal law.

XV. SITE ACCESS

52. Respondents shall permit EPA and its authorized representatives to have access at all times to the Site to monitor any activity conducted pursuant to this Order and to conduct such tests or investigations as EPA deems necessary. Nothing in this Order shall be deemed a limit on EPA's authority under federal law to gain access to the Site.

53. To the extent that Respondents require access to land other than land they own in carrying out the terms of this Order, Respondents shall, within ten (10) days of the Effective Date of this Order, obtain access for EPA, its contractors, oversight officials, or other authorized representatives; state oversight officials and state contractors; and Respondents or their authorized representatives. If Respondents fail to gain access within ten (10) days, they shall continue to use best efforts to obtain access until access is granted. For purposes of this Paragraph, "best efforts" includes, but is not limited to, seeking judicial assistance, providing indemnification, or the payment of money as consideration for access. If access is not provided within the time referenced above, EPA may obtain access under Sections 104(e) or 106(a) of CERCLA, and recover any costs incurred in accordance with Section XVI of this Order.

XVI. REIMBURSEMENT OF OVERSIGHT COSTS

54. Respondents shall reimburse EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondents' implementation of the requirements of this Order. EPA may submit to Respondents on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. Respondents shall, within thirty (30) days of receipt of the bill, remit by cashiers or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency
Region 9, Attn.: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

Respondents shall send a cover letter with any check and the letter shall identify the AAD Oakland Site by name and make reference to this Order. Respondents shall send simultaneously to the EPA OSC a notification of any amount paid, including a photocopy of the check.

55. Interest at the rate identified in Section 107(a) of CERCLA, 42 U.S.C. §9607(a),

shall begin to accrue on the unpaid balance from the day of the original demand notwithstanding any dispute or objection to any portion of the costs.

XVII. DELAY IN PERFORMANCE

56. Any delay in the performance of any requirement of this Order that, as determined within the sole judgment and discretion of the EPA, is not properly justified by Respondents under the terms of this Section shall be considered a violation of this Order. Any delay in performance of any requirement of this Order shall not affect any other obligation of Respondents under the terms and conditions of this Order.

57. Respondents, as applicable, shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's primary OSC within twenty-four (24) hours after Respondents first knew or should have known that a delay might occur. The Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within three (3) days after notifying EPA by telephone, the Respondents shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why the Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order are not justifications for any delay in performance.

58. If Respondents are unable to perform any activity or submit any document within the time required under this Order, the Respondents may, prior to the expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay. The submission of an extension request shall not itself affect or extend the time to

perform any of Respondents' obligations under this Order.

59. If EPA determines that good cause exists for an extension of time, it may grant a request made by Respondents pursuant to Paragraph 58 above, and specify in writing to the Respondents the new schedule for completion of the activity or submission of the document for which the extension was requested.

XVIII. RECORD PRESERVATION

60. Respondents shall maintain, during the pendency of this Order, and for a minimum of five (5) years after EPA provides notice to Respondents that the work has been completed, a depository of the records and documents required to be prepared under this Order. In addition, Respondents shall retain copies of the most recent version of all documents that relate to hazardous substances at the Site and that are in its possession or in the possession of its employees, agents, contractors, or attorneys. After this five-year period, Respondents shall notify EPA at least thirty (30) days before the documents are scheduled to be destroyed. If EPA so requests, Respondents shall provide these documents to EPA.

XIX. ENFORCEMENT AND RESERVATIONS

61. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. §9607, for recovery of any response costs incurred by the United States related to this Order or otherwise incurred at the Site and not reimbursed by Respondents. This reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight costs, as well as accrued interest as provided in Section 107(a) of CERCLA, 42 U.S.C. §9607.

62. Notwithstanding any other provision of this Order, at any time during the Response Action, EPA may perform its own studies, complete the Response Action (or any

portion of the Response Action) and seek reimbursement from Respondents for its costs, or seek any other appropriate relief.

63. Nothing in this Order shall preclude EPA from taking any additional enforcement action, including modification of this Order or issuance of additional Orders, or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. §9607(a), et seq., or any other applicable law. Respondents shall be liable under Section 107(a) of CERCLA, 42 U.S.C. §9607(a), for the costs of any such additional actions.

64. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA, or any other applicable statutes or regulations.

65. Notwithstanding compliance with the terms of this Order, including the completion of the EPA-approved Response Action, Respondents are not released from liability, if any, for any enforcement actions beyond the terms of this Order taken by EPA.

66. EPA reserves the right to take any enforcement action pursuant to CERCLA or any other legal authority, including the right to seek injunctive relief, monetary penalties, reimbursement of response costs, and punitive damages for any violation of law or this Order.

67. EPA expressly reserves all rights and defenses that it may have, including the EPA's right both to disapprove of work performed by Respondents and to request the Respondents perform tasks in addition to those detailed in this Order, as provided in Section IX of this Order.

68. This Order does not release Respondents, individually or collectively, from any claim, cause of action or demand in law or equity, including, but not limited to, any claim, cause

of action, or demand that lawfully may be asserted by representatives of the United States or the State of California.

69. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondents will be construed as relieving Respondents of their obligation to obtain such formal approval as may be required by this Order.

XX. SEVERABILITY

70. If any provision or authority of this Order or the application of this Order to any circumstance is held by a court to be invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected thereby, and the remainder of this Order shall remain in force.

XXI. DISCLAIMER

71. The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondents, or their employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither EPA nor the United States shall be held as a party to any contract entered into by Respondents, or their employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order.

XXII. PENALTIES FOR NONCOMPLIANCE

72. Respondents are advised pursuant to Section 106(b) of CERCLA, 42 U.S.C. §9606(b), that willful violation or subsequent failure or refusal to comply with this Order, or any portion thereof, may subject Respondents to a civil penalty of up to \$27,500 per day for each day in which such violation occurs, or such failure to comply continues. Failure to comply with this

Order, or any portion thereof, without sufficient cause also may subject Respondents to liability for punitive damages in an amount three times the amount of any cost incurred by the government as a result of the failure of Respondents to take proper action, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3).

XXIII. TERMINATION AND SATISFACTION

73. The provisions of this Order shall be deemed satisfied upon Respondents' receipt of written notice from EPA that Respondents have demonstrated, to the satisfaction of EPA, that all of the terms of this Order, including any additional tasks which EPA has determined to be necessary, have been completed.

Unilateral Administrative Order 2001-02

IT IS SO ORDERED:

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

By: _____

Keith A. Takata, Director
Superfund Division
Region 9

Date: _____

4/1/00

EPA Region 9 Contacts, UAO 2001-02:

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APPENDIX A
RESPONDENTS TO EPA
UNILATERAL ADMINISTRATIVE ORDER 2001-02

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2. Harry Pourat, President & Registered Agent
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3. Holt Greene
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cc Robert H. & Joane H. Greene Trust
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